

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

MICHAEL SIMS, )  
Petitioner, )  
v. ) No. 3:13 CV 57  
SUPERINTENDENT, )  
Respondent. )

**OPINION AND ORDER**

Michael Sims, a *pro se* prisoner, filed this habeas corpus petition attempting to challenge his 1989 convictions and 120 year sentence by the Elkhart Superior Court under cause number 20D02-9801-CF-1. This is not the first time that Sims has brought a habeas corpus petition challenging that conviction. In *Sims v. Superintendent*, 3:11-CV-297 (N.D.Ind. filed July 27, 2011), Sims sought to challenge the same conviction he is challenging here. The court found that the petition was untimely and final judgment was entered August 8, 2011. A “prior untimely petition . . . is not a curable technical or procedural deficiency but rather operates as an irremediable defect barring consideration of the petitioner’s substantive claims.” *Altman v. Benik*, 337 F. 764, 766 (7th Cir. 2003). Therefore this case is a successive habeas corpus petition.

This court lacks jurisdiction to hear an unauthorized second or successive habeas petition. 28 U.S.C. § 2244(b)(3)(A). “A district court *must* dismiss a second or successive petition, without awaiting any response from the government, unless the court of appeals has given approval for its filing.” *Nunez v. United States*, 96 F.3d 990, 991 (7th

Cir. 1996) (emphasis in original). Because Sims has not obtained authorization from the court of appeals to file a successive petition, this case is **DISMISSED** for want of jurisdiction.

**SO ORDERED.**

Date: February 7, 2013

s/James T. Moody  
JUDGE JAMES T. MOODY  
UNITED STATES DISTRICT COURT